

# **EXHIBIT 13**

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 IN RE: NATIONAL ) MDL No. 2804  
5 PRESCRIPTION OPIATE )  
6 LITIGATION ) Case No.  
7 ) 1:17-MD-2804  
8 )  
9 THIS DOCUMENT RELATES TO ) Hon. Dan A.  
10 ALL CASES ) Polster  
11 )

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Monday, May 13, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIALITY REVIEW

Videotaped Deposition of JAMES E.  
RAFALSKI, held at Weitz & Luxenburg PC, 3011  
West Grand Avenue, Suite 2150, Detroit,  
Michigan, commencing at 9:20 a.m., on the  
above date, before Michael E. Miller, Fellow  
of the Academy of Professional Reporters,  
Registered Diplomate Reporter, Certified  
Realtime Reporter and Notary Public.

GOLKOW LITIGATION SERVICES  
877.370.3377 ph | fax 917.591.5672  
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1       been, we can put aside for another day.  
2       Okay? Let's just say that there's an order  
3       of unusual size, frequency, pattern, that, in  
4       fact, was shipped and it -- you can even  
5       say -- and let's say it should have been  
6       reported as a suspicious order, but it  
7       shipped. All right?

8                       Do you agree that even though  
9       that order was shipped and even though you  
10      say it shouldn't have been shipped, it  
11      doesn't necessarily mean that the pills that  
12      underlie that order are going to be diverted.  
13      You don't know.

14                     MR. FULLER: Object to form.

15       BY MR. NICHOLAS:

16                     Q.       Correct?

17                     A.       So I'll answer that question by  
18      saying that if it's identified as suspicious  
19      order by unusual size or unusual frequency or  
20      deviating form -- you know, substantial  
21      deviation from a pattern, so to me that puts  
22      it as a probable, greater than 51% that it's  
23      going to be diverted because it's been  
24      identified.

25                     So I can't draw the conclusion

1       that I don't know that it's going to be  
2       diverted. I probably can't draw a definitive  
3       statement that it is, but I'm going to say  
4       that it's more probable because the system  
5       identified it.

6               Q.       So you got it at 51% above,  
7       it's going to be diverted; is that what  
8       you're telling me?

9               A.       Well, that's the definition of  
10       probable. If it's an effective suspicious  
11       order system, I believe the percents would  
12       rise much higher than that, but I guess that  
13       depends on the effectiveness of the  
14       suspicious order system.

15              Q.       Where are you getting that  
16       percent from? Where are you getting that  
17       from, just your own --

18              A.       What?

19              Q.       The 51, the probable, where are  
20       you getting that it's probable?

21              A.       That's my belief of what  
22       probable means.

23              Q.       Okay. Other than your belief,  
24       is it written down anywhere? Is there any  
25       research on that? Is there any data on that?

1 Is this just -- just your belief?

2 A. Not that I can cite.

3 Q. Okay.

4 MR. FULLER: Vegas odds.

5 MR. NICHOLAS: Okay.

6 BY MR. NICHOLAS:

7 Q. Did you look at any individual  
8 orders from any pharmacies in the Cuyahoga or  
9 Summit Counties?

10 A. I looked at some DEA 222 forms,  
11 but I believe my recollection, it was out of  
12 maybe the Boston area, so I would say no.

13 Q. Okay.

14 A. No original records. I  
15 reviewed no original records.

16 Q. You reviewed data that was in  
17 the aggregate, right, totals? Correct?

18 A. No. I reviewed -- so just so  
19 we're clear on, you know, what we're talking  
20 about, so there's no confusion.

21 Q. Uh-huh.

22 A. So to me, in the DEA world, an  
23 original record is the actual DEA order form,  
24 the invoice or a CSOS electronic order form.  
25 So that's what I would consider an original

1 record. Also provided to me, there's the  
2 ARCOS data, which is not an original record,  
3 and there were some electronic databases that  
4 appeared to me to be an electronic  
5 spreadsheet or an electronic format of orders  
6 that distributors or registrants had  
7 submitted as part of the discovery. But none  
8 of those would be what I would consider an  
9 original record.

10 Q. Can you identify a particular  
11 order from a particular pharmacy that you  
12 believe should have been reported as  
13 suspicious?

14 A. Well, in my assignment to  
15 create this and do the investigation to come  
16 to this opinion, there wasn't a requirement  
17 for me to actually find specific orders that  
18 were suspicious.

19 First of all, it would require  
20 the use of the suspicious order system of the  
21 registrant, like what would be the criteria.  
22 The -- and the thing I found in doing my  
23 opinion is that probably the most critical  
24 part of setting up a suspicious order system  
25 is the due diligence or sometimes in the

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1           Q.       My question is simply: Do you  
2       agree with me that the formula in  
3       Appendix E(3) that Walgreens used to report  
4       suspicious orders from 2007 to 2012 is not  
5       the same as the customer grouping formula  
6       Walgreens was using in 2006?

7           A.       Well, this statement just goes  
8       to say that they used the same multiplier, so  
9       the three multiplier is the same as the E(3)  
10      as it is in the area referenced in the prior  
11      time period.

12          Q.       The two formulas are not the  
13      same, correct, sir?

14          A.       The formulas are not, but the  
15      multiplier is.

16          Q.       Okay. That's all I'm trying to  
17      get an understanding from you is whether the  
18      customer grouping formula that Walgreens was  
19      using when it received the 2006 letter from  
20      the DEA is the same or different from the  
21      formula it changed to use afterwards?

22          A.       There's no customer grouping in  
23      the subsequent years --

24          Q.       Thank you.

25          A.       -- starting in 2007.



1 Q. You didn't do -- well, strike  
2 that.

3 You don't say in your report  
4 that you or anyone else at the DEA ever told  
5 Walgreens not to use the formula found in  
6 Appendix E(3) of the Chemical Handler's  
7 Manual, correct, sir?

8 A. Appendix E(3) was never  
9 discussed in my presence with Walgreens.

10 Q. The DEA's 2006 letter to  
11 Walgreens doesn't say not to use the E(3)  
12 formula, correct?

13 A. I still stand by my previous  
14 statement. The E(3) appendix was never  
15 discussed by me or anyone in my presence the  
16 whole time I was at Walgreens.

17 Q. And it's not mentioned in this  
18 letter either?

19 A. It is not mentioned in that  
20 letter.

21 Q. All right. I'd like you to  
22 turn to page 40 of your report, please. Is  
23 that 40?

24 A. I'm sorry.

25 Q. I believe you testified

1       yesterday that you did not review any of the  
2       flagged orders from Dr. McCann's analysis; is  
3       that correct?

4               A.       I think my testimony in that  
5       area was any specific orders. That would be  
6       correct of what my testimony was, yes.

7               Q.       You did not do any analysis to  
8       see whether any specific suspicious order  
9       caused the diversion of any specific pills  
10      for nonmedical use, correct?

11              A.       In regards to Dr. McCann's --

12              Q.       Correct.

13              A.       That would be a correct  
14      statement. I didn't do a specific order of a  
15      specific drug, if I understand your question  
16      properly.

17              Q.       Well, you asked for a  
18      clarification of whether I was speaking about  
19      Dr. McCann's analysis.

20                      You didn't do any analysis to  
21      see whether any specific suspicious order  
22      caused the diversion of any specific pills,  
23      correct?

24                      MR. FULLER: Object to form.

25              A.       I think that's an accurate

1 statement.

2 BY MS. SWIFT:

3 Q. You testified yesterday that  
4 you endorsed Flagging Method A, which you can  
5 see at the top of page 41 of your report.  
6 Because it -- is that correct?

7 A. I think that's an accurate  
8 statement. It was -- I endorsed it because  
9 it was utilized by the Masters  
10 Pharmaceutical.

11 Q. Is that the only reason you  
12 endorsed Flagging Method A?

13 A. No, that wouldn't be the only  
14 reason, no, ma'am.

15 Q. Did any of the plaintiffs'  
16 lawyers instruct or suggest to you that you  
17 use Flagging Method A?

18 A. No.

19 Q. What other reasons did you  
20 endorse Flagging Method A?

21 A. One, it was part of one of the  
22 investigations I conducted, so I was familiar  
23 with it. I believe it was discussed at an  
24 administrative hearing with the DEA,  
25 subsequently reviewed by the D.C. Court, and

1       there was a ruling on it from the D.C. Court  
2       and also the one ruling that it was part of  
3       this litigation, I think...

4               Q.       Discovery Ruling 12?

5               A.       Yes, Discovery Ruling 12. So I  
6       think it's had some scrutiny. I think it  
7       would be the proper one. And that's...

8               Q.       What analysis, if any, did you  
9       undertake to test each of the five flagging  
10      methodologies and their ability to identify  
11      suspicious orders?

12              A.       Could you say that one more  
13      time, please?

14              Q.       Sure.

15                      What analysis, if any, did you  
16      do to test the five flagging methodologies in  
17      your report and their ability to identify  
18      suspicious orders?

19              A.       I didn't personally do any  
20      tests. I'm aware that they could have been  
21      done by Dr. McCann, but I didn't personally  
22      do them.

23              Q.       Do you know whether Dr. McCann  
24      conducted any analysis at all to test the  
25      five flagging methodologies and their ability

1 to identify suspicious orders?

2 MR. FULLER: Object to form.

3 A. He had an extensive report.

4 I'm not sure on that. I believe he did, but

5 I'm not sure.

6 BY MS. SWIFT:

7 Q. Why do you believe Dr. McCann  
8 did any analysis at all to test the five  
9 flagging methodologies and their ability to  
10 identify suspicious orders?

11 MR. FULLER: Object to form.

12 A. Well, I think that's what this  
13 does.

14 BY MS. SWIFT:

15 Q. You think that's what what  
16 does?

17 A. I think the methodology of A  
18 identifies suspicious orders based on that  
19 methodology, and then it provides them in  
20 dosage units. So I think ultimately, for  
21 these dosage units to appear on this page,  
22 there had to be flagged suspicious orders.

23 Q. You're pointing to a page of  
24 your report, not Dr. McCann's report,  
25 correct, sir?

1           A.       Right. But -- yes. But for me  
2       to see this --

3                   MR. FULLER: Form.

4           A.       -- I would have to know that  
5       this methodology had flagged suspicious  
6       orders because that's the only way the dosage  
7       units could appear on this chart.

8       BY MS. SWIFT:

9           Q.       Did you read Dr. McCann's  
10      report?

11          A.       I did.

12          Q.       When did you read Dr. McCann's  
13      report?

14          A.       Sometime after he had submitted  
15      it and reviewed his charts resulting from his  
16      analysis.

17          Q.       Did you read Dr. McCann's  
18      report before you put together this section  
19      of your report that appears at page 41?

20          A.       No.

21          Q.       Flagging Methodology A -- I'm  
22      still at page 41 of your report. I'm going  
23      to focus on the rows of these tables that  
24      we've got here that relate to my client,  
25      which is Walgreens, okay?

1 A. Sure. Yes, ma'am.

2 Q. Flagging Methodology A flagged  
3 [REDACTED] of all Walgreens orders by dosage unit of  
4 oxycodone and hydrocodone, correct, sir?

5 A. Yes, ma'am.

6 Q. Is it your professional opinion  
7 to a reasonable degree of certainty that [REDACTED]  
8 of Walgreens orders should not have been  
9 shipped?

10 A. Based on the conduct of  
11 Walgreens and the failure to do due diligence  
12 on suspicious orders, yes, ma'am.

13 Q. Is it your opinion to a  
14 reasonable degree of certainty that only [REDACTED]  
15 of orders from Walgreens stores should have  
16 been shipped and available to fill  
17 prescriptions for Walgreens patients?

18 A. Well, that would be the  
19 converse of this statement, but based on  
20 their conduct -- I'll go back again, based on  
21 their conduct and their failure to do  
22 diligence after identification of suspicious  
23 orders, the only conclusion I can draw is  
24 that subsequent to that act, all of the  
25 controlled substances were diverted.

1 Q. So that's a yes, your opinion  
2 is that only [REDACTED] of orders from Walgreens  
3 stores should have been shipped and available  
4 to fill prescriptions for Walgreens patients?

5 MR. FULLER: Object to form.

6 A. I really don't know because  
7 Walgreens didn't conduct the proper due  
8 diligence. But based on the methodology and  
9 how I applied it, that's the results of the  
10 methodology.

11 BY MS. SWIFT:

12 Q. You don't know whether it's  
13 true that only [REDACTED] of orders from Walgreens  
14 stores should have been shipped and available  
15 for prescriptions to be filled for Walgreens  
16 patients?

17 A. I guess you would draw that  
18 conclusion based on [REDACTED] based on the  
19 conduct of Walgreens, yes, ma'am.

20 Q. You would draw the  
21 conclusion --

22 A. I would draw the conclusion  
23 based on --

24 Q. Let me ask the question so the  
25 record is clear.



1                   You would draw the conclusion  
2       that only [REDACTED] of Walgreens orders should have  
3       been shipped so that prescriptions could be  
4       filled for Walgreens patients?

5                   MR. FULLER: Object to form,  
6                   asked and answered. You've asked it  
7                   twice now or three times, probably.

8                   A.       Same as my previous statement.  
9       Based on Walgreens' conduct in regards to  
10      applying this methodology, that would be a  
11      correct statement, yes, ma'am.

12                  BY MS. SWIFT:

13                 Q.       You didn't do any analysis of  
14      how many people would not have gotten their  
15      medication if [REDACTED] of Walgreens orders had not  
16      shipped, correct, sir?

17                 A.       I did not.

18                 Q.       You didn't do any analysis of  
19      how many legitimate prescriptions would have  
20      gone unfilled if 95% of Walgreens orders had  
21      not been shipped, correct, sir?

22                 A.       I did not do that analysis, no,  
23      ma'am.

24                 Q.       In your report, you don't offer  
25      an opinion on the legitimacy of any of the

1 A. Yes.

2 Q. You show aggregated numbers for  
3 each defendant for oxycodone and hydrocodone,  
4 correct?

5 A. Yes, I do.

6 Q. All right. I'm going to focus  
7 on Walgreens. You provide one number for  
8 flagged orders of oxycodone into Cuyahoga  
9 County, right?

10 MR. FULLER: Are you looking at  
11 the first methodology?

12 MS. SWIFT: Yeah, the  
13 40 million and some odd.

14 A. Yes, ma'am.

15 BY MS. SWIFT:

16 Q. Then you do the same thing for  
17 Summit County below, correct, sir?

18 A. Yes, ma'am.

19 Q. You provide one number for  
20 Walgreens shipments of oxycodone into Summit,  
21 right?

22 A. Yes, ma'am.

23 Q. You provide one number for  
24 Walgreens shipments of hydrocodone into  
25 Summit, correct?

1 A. Yes, ma'am.

2 Q. And then you do the same thing  
3 for all five of the flagging methods,  
4 correct?

5 A. That's correct.

6 Q. You don't break down the  
7 numbers by any individual pharmacy in your  
8 report, correct?

9 A. I do not.

10 Q. You did not perform any  
11 analysis to show how many orders were flagged  
12 at any individual Walgreens pharmacy,  
13 correct?

14 A. I do not show that in my  
15 report, but I know that that has to exist  
16 because it's obviously part of the analysis  
17 done by Dr. McCann.

18 Q. Have you seen it?

19 A. I have not.

20 Q. Do you know for a fact whether  
21 McCann did any flagging analysis on a  
22 pharmacy-by-pharmacy basis?

23 A. So I'd like to answer that by  
24 saying -- when you say I know by a fact, I  
25 would know through the analysis of the ARCOS

1 data that it would have to indicate specific  
2 orders which would identify those pharmacies.

3 Now, whether he looked at them  
4 specifically to that pharmacy, but based on  
5 your question, just the analysis of the ARCOS  
6 data, that -- that actually would occur  
7 because each order would be specific to a  
8 pharmacy.

9 He didn't -- if I understand  
10 your question, he didn't look at them in  
11 terms of each specific pharmacy, but the  
12 nature of the analysis, it is by the pharmacy  
13 by the orders.

14 Q. You did not perform an analysis  
15 to see whether Walgreens performed diligence  
16 on any of the actual orders that flagged on  
17 any of your five methodologies in  
18 Mr. McCann's analysis, correct?

19 A. Well, my investigation and  
20 opinion of Walgreens does state that in  
21 regards to the due diligence topic.

22 Q. Listen to my question. That's  
23 not what I'm asking about.

24 A. Okay.

25 Q. We'll get to the stuff you say

1 in your report about the due diligence that  
2 Walgreens did.

3 You didn't perform an analysis  
4 to see whether Walgreens performed diligence  
5 on any of the specific orders that flagged on  
6 any of these five methodologies, correct,  
7 sir?

8 A. I'm not aware of any due  
9 diligence for those orders, that's correct.

10 Q. That's not what I asked.

11 A. I didn't -- I didn't  
12 specifically go to McCann's report and look  
13 at each order of Dr. McCann's and try to find  
14 due diligence. I just looked at the scope of  
15 the due diligence by Walgreens.

16 Q. You didn't go to Dr. McCann's  
17 report and look at any order of -- that  
18 flagged on any of the analyses.

19 A. That's a correct statement.

20 Q. For any of the five flagging  
21 methods that you talk about, did you consider  
22 the impact of stocking a new store's shelves?

23 A. I did not take that specific  
24 incident into consideration, but in my review  
25 of due diligence records, I didn't find

1 anything that would indicate that that had  
2 occurred.

3 Q. Did you consider whether any of  
4 the five flagging methods that you talk about  
5 could flag an order for a store before the  
6 store even opened for business, just based on  
7 the stocking of the store's shelves? Do you  
8 know whether that happened?

9 A. I'm not aware that that had  
10 happened.

11 Q. Did you read Dr. McCann's  
12 testimony from this past Friday that using at  
13 least some of these five flagging methods, an  
14 order to stock a new store's shelves could be  
15 flagged?

16 A. I don't recall reading that in  
17 his testimony, no, ma'am.

18 Q. Did you read his testimony yet?  
19 I know it was just the other day.

20 A. I've read so many. I don't  
21 believe so.

22 Q. I will represent to you, and  
23 you can check the transcript, that Dr. McCann  
24 testified that for low-volume stores, the  
25 store might never have another order as big

1 Q. You didn't --

2 A. -- trigger.

3 Q. You can't vouch for the  
4 accuracy of any of the numbers that appear in  
5 these tables at pages 41 to 45 of your  
6 report, correct, sir?

7 A. Mr. McCann would have to  
8 testify to the accuracy. He did the  
9 analysis.

10 Q. You just relied on what  
11 Mr. McCann provided, correct, sir?

12 A. Yes, I did.

13 Q. You were -- strike that.  
14 You don't have an opinion about  
15 whether any particular order that you  
16 identified or that Dr. McCann identified as  
17 suspicious was diverted to an illicit  
18 channel, correct, sir?

19 A. Well, I think based on the  
20 methodologies and the lack of due diligence,  
21 I think my -- these say that those were  
22 diverted.

23 Q. My question was a little bit  
24 different.

25 A. Okay.

1           Q.       You don't have an opinion about  
2       whether any particular order -- you didn't  
3       look at any particular order to see whether  
4       it was diverted to an illicit channel?

5           A.       I did not --

6           Q.       Okay.

7           A.       -- analyze all the orders and  
8       try to find one or locate one that was  
9       diverted.

10          Q.       You didn't analyze any of the  
11       orders, correct, sir?

12          A.       That's correct.

13          Q.       You have no opinion about  
14       whether any particular order that was flagged  
15       as suspicious led to someone's addiction,  
16       overdose or death, correct, sir?

17          A.       As of today, I have no opinion  
18       on that matter.

19          Q.       Do you plan on coming up with  
20       that opinion at some point after today?

21          A.       I can't rule that out if I'm  
22       asked to look at that or I'm provided some  
23       information I could review that would -- that  
24       would indicate that. So I can't rule out  
25       that that would occur.



1 Q. If a prescription was  
2 legitimate, the pharmacist was obligated to  
3 fill it, correct, sir?

4 MR. FULLER: Form.

5 A. I don't think the DEA speaks to  
6 that, whether they're obligated to fill a  
7 prescription.

8 BY MS. SWIFT:

9 Q. Do you know one way or the  
10 other whether --

11 A. If the DEA speaks to that  
12 topic?

13 Q. No, sorry.

14 Do you know whether pharmacists  
15 are obligated by their professional  
16 responsibilities to fill prescriptions that  
17 they have determined are legitimate? Maybe  
18 you don't know one way or the other.

19 A. Let me think. I don't know  
20 that, the answer to that question.

21 Q. All right. Turn, if you would,  
22 please, to page 114 of your report.

23 A. Can I qualify my last answer,  
24 quickly?

25 Q. Sure.

1 Q. Is that the page 856 that you  
2 cite in your report at page 114?

3 A. Yes, ma'am.

4 Q. Okay. This Appendix 10 from  
5 McCann's report is what you relied on to  
6 determine total volume of oxycodone and  
7 hydrocodone that Walgreens shipped into  
8 Cuyahoga and Summit Counties; is that right?

9 A. Yes, ma'am.

10 Q. You only talk about oxycodone  
11 and hydrocodone in your report, correct?

12 A. Yes, ma'am.

13 Q. Am I right that you don't have  
14 any opinions about any other opioid pain  
15 medications besides oxy and hydro?

16 A. As of today I do not because I  
17 was not requested to do any analysis on those  
18 other drugs.

19 Q. After -- turn back to page 1 of  
20 Exhibit 21. The page 1 of Exhibit 21 is a  
21 table that shows overall numbers, Total  
22 Shipments to Cuyahoga identified by  
23 Methodology, Common Sense Method, Maximum  
24 Monthly Trailing Six-Month Pharmacy Specific  
25 Threshold, Walgreens to All Buyers, 1996 to

1       2018, correct?

2               A.       Yes.

3               Q.       And it's a table that shows  
4       numbers broken out by drug and by  
5       transaction, dosage units, MME, and base  
6       weight, correct?

7               A.       Yes.

8               Q.       After the table on page 1 of  
9       Appendix 10, there's a series of bar graphs  
10       showing, in the aggregate, Walgreens  
11       shipments of oxy and hydro to its pharmacies  
12       in the aggregate, correct?

13              A.       Yes, ma'am.

14              Q.       None of these charts shows any  
15       data for any individual Walgreens pharmacy,  
16       correct?

17                      MR. FULLER: Object to form.

18              A.       That's an accurate statement,  
19       but they're all built upon individual orders.

20       BY MS. SWIFT:

21              Q.       I understand.

22              A.       Okay.

23              Q.       I'm just saying, when you're  
24       flipping through Dr. McCann's charts that  
25       display the results of his flagging

1 methodologies, you can't tell anything about  
2 any individual pharmacy, correct?

3 A. I cannot by looking at these  
4 charts.

5 Q. Do you know how many Walgreens  
6 stores there are in Cuyahoga County?

7 A. I do not.

8 Q. How about Summit County?

9 A. I do not.

10 Q. Do you know anything about the  
11 geographic locations of any of Walgreens'  
12 pharmacies in Summit or Cuyahoga County,  
13 other than the fact that they're in those  
14 counties?

15 A. It doesn't appear in my  
16 opinion, but during my review of data, I did  
17 at one point take a look by just using the  
18 Internet, Googling and looking at some of the  
19 locations, but I didn't formulate a report on  
20 that.

21 So I won't say that I never did  
22 that, but I don't have any records or  
23 documents that would record exactly the  
24 distances and the locations.

25 Q. You also didn't include in your

1 report anything about the specific customer  
2 base for any individual Walgreens pharmacy,  
3 correct, sir?

4 A. I did not.

5 Q. Do you know how many of the  
6 Walgreens pharmacies in Cuyahoga and Summit  
7 County are on corner lots?

8 A. I do not.

9 Q. Do you know how many of the  
10 Walgreens pharmacy in Summit and Cuyahoga  
11 Counties are freestanding locations with  
12 their own dedicated parking and a  
13 drive-through window?

14 A. I do not.

15 Q. Do you know how much oxycodone  
16 or hydrocodone Walgreens distribution centers  
17 shipped to any one of those Walgreens  
18 pharmacies?

19 A. I do not. I had not done that  
20 analysis up to today.

21 Q. You can't tell any of that from  
22 the charts that are in Appendix 10, correct,  
23 sir?

24 A. That's correct.

25 Q. All right. You can set that

1       one aside.

2                       Turn, if you would, please,  
3       sir, to page 117 of your report. This is a  
4       section within the Walgreens section about  
5       the due diligence that you believe Walgreens  
6       conducted, correct?

7               A.       Yes, ma'am.

8               Q.       Now, as I understand it, it's  
9       your opinion that because you only saw a  
10      limited number of e-mails about due diligence  
11      that Walgreens performed 10, 12, 13 years  
12      ago, that that means Walgreens performed no  
13      other due diligence; is that correct?

14              A.       Not that was brought to my  
15      attention in trying to formulate my opinion.

16              Q.       And in formulating your  
17      opinion, you determined that Walgreens had  
18      only conducted limited due diligence because  
19      you only saw documentation of limited due  
20      diligence, correct?

21              A.       That's the only basis I could  
22      use to form my opinion.

23              Q.       You based your -- well, let me  
24      ask you this.

25                      Did you read any of the

1 diligence on an order. That -- what you just  
2 read says nothing about that, right?

3 A. It does not say --

4 Q. Okay.

5 A. -- that it would flag all  
6 subsequent orders, but it does say if you  
7 don't do the due diligence, you could lose  
8 your DEA registration.

9 Q. Have you done any calculation  
10 of what the impact is of the assumption that  
11 everything flags after one failure to do due  
12 diligence?

13 A. I have not. You mean in terms  
14 of denial of controlled substances to the two  
15 counties? Is that --

16 Q. Well, in terms of the number of  
17 orders that are -- or the percentage of  
18 orders that are flagged for each one of the  
19 distributor defendants in this case.

20 A. In regards to?

21 Q. Well, say -- take a look at  
22 page 41.

23 A. Okay.

24 Q. This is by dosage units, I  
25 understand.

1 A. Yes.

2 Q. But if you look at the CVS line  
3 for Cuyahoga County on page 41, you've got  
4 [REDACTED] of the total dosage units are flagged  
5 using the trailing six-month threshold?

6 A. I do.

7 Q. And you have [REDACTED] of the total  
8 dosage units in Summit County that are  
9 flagging, right?

10 A. I do.

11 Q. And if you remove the  
12 assumption that everything after one failed  
13 due diligence effort flags, do you know what  
14 those numbers go down to?

15 A. I do not.

16 Q. You have no clue?

17 A. I have no clue.

18 Q. If I told you that in Summit  
19 County they go down to [REDACTED] rather than [REDACTED],  
20 and they go down to [REDACTED] rather than [REDACTED] in  
21 Cuyahoga, would that surprise you?

22 A. I wouldn't have a comment on  
23 those figures.

24 Q. Now, you also have testified  
25 already a little bit about whether or not you



1 reviewed any particular orders, and I think  
2 your answer in substance is no, you didn't  
3 review any particular orders that might or  
4 might not have been suspicious.

5 Is that generally true?

6 A. That's generally true, that's  
7 my recollection is I answered that way  
8 previously, too, yes, sir.

9 Q. And with respect to any of the  
10 orders that are flagged by these  
11 methodologies under your and Mr. McCann's  
12 analysis, you don't know what happened to any  
13 of the drugs that were actually shipped and  
14 delivered to CVS Pharmacies?

15 A. I don't have any direct  
16 knowledge of what happened to any of the  
17 drugs that were distributed to each of the  
18 pharmacies. I didn't conduct any analysis as  
19 of today that would give me that knowledge.

20 Q. And you don't know whether -- I  
21 understand that your opinion is that the due  
22 diligence was insufficient by CVS, and we'll  
23 get to that in a minute.

24 But you don't know whether any  
25 of these orders would have cleared a due

1 diligence investigation that does meet your  
2 exacting standards, do you?

3 A. Could you say that one more  
4 time, I'm sorry?

5 Q. I'm just saying you don't know  
6 whether any of the orders that are flagged  
7 using your and Mr. McCann's methodologies for  
8 CVS would have been cleared using what you  
9 would say is an adequate due diligence  
10 process. You haven't done that analysis.

11 A. So I think what you're asking,  
12 is it a hypothetical question?

13 Q. Yes.

14 A. Okay.

15 Q. Well, no, actually it's not.  
16 You don't know. I'm asking you. You don't  
17 know?

18 A. Well, I guess you're asking me  
19 to assume that if CVS had an adequate due  
20 diligence system in place and they conducted  
21 it? Is that the question? Maybe I don't  
22 understand the question.

23 Q. Let's -- if you took your  
24 standards for a due diligence system --

25 A. Okay.